IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 692 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ? No.

2 To be referred to the Reporter or not ? NO.

3 Whether their Lordships wish to see the fair copy of the judgment ? No.

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ? No.

5 Whether it is to be circulated to the civil judge ? No.

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ARVINDBHAI BHIKHABHAI PARMAR - Applicant(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR PS CHAMPANERI for Applicant(s) : 1,
MR KC SHAH APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 28/11/2007

ORAL JUDGMENT ;

1. Learned advocate for the petitioner seeks permission to produce on record copy of list

Exh. 39 produced by the prosecution. The document is ordered to be taken on record.

2. Rule. Learned A.P.P. Mr. K.C. Shah waives service of notice on behalf of the respondent – State.

3. In the facts and circumstances of the case, with the consent of the learned advocate for the petitioner and learned A.P.P. this criminal revision application is taken up for final hearing today.

4. The petitioner has filed this criminal revision application under Section 397 read with Section 401 of the Code of Criminal Procedure, 1973 and challenged the order passed by learned J.M.F.C., Patdi on 23-8-2007 below Exh.74 in Criminal Case No. 603 of 1994 whereby the trial Court allowed the application and admitted the documents in evidence produced with list Exh. 39.

5. The petitioner is facing trial for the offences punishable u/s l40, 409 and 466 of the I.P. Code. During the course of recording of the evidence of witness Akbarbhai

Alarakhabhai Kureshi documents with list Exh. 39 were produced and referred to in the evidence. The trial Court admitted the documents in evidence and exhibited them despite objection raised by the petitioner with regard to admissibility of the documents in the evidence. After hearing the parties, the trial Court allowed the application Exh. 74 and admitted the documents in evidence produced with list Exh. 39. Being aggrieved by the said decision, the petitioner – accused has filed this Criminal Revision Application.

6. In the decision of **Bipin Shantilal Panchal Vs. State of Gujarat & Anr.**, reported in **(2001) 3 SCC 1**, the Hon'ble Supreme Court gave directions to the trial Courts to follow the procedure at evidence taking stage when any objection is raised regarding admissibility of any material or any item of oral evidence. The Hon'ble Supreme Court held that, “practice of passing detailed order allowing or rejecting the objection and then giving time by suspending trial to enable the parties concerned to move the higher court against such interlocutory order, held not proper. The Hon'ble Supreme court also held

that instead of deciding such objections, the trial should make a notice of such objection and decide it at the last stage of the final judgment.

7. In view of above decision of the Hon'ble Supreme Court, if legality of the order is decided at this stage, it would not be proper as it would consume time and proceedings before the trial court would be paralysed. Instead of that it would be in the fitness of things to direct the trial Court to record the objections raised by the petitioner with regard to the documents and give tentative exhibit number and decide the admissibility at the last stage in the final judgment and if the court finds that the objections raised are sustainable, the Magistrate can keep such evidence excluded from consideration.

8. In view of above, this application is allowed and the impugned order passed by learned J.M.F.C., Patdi on 23-8-2007 below Exh.74 in Criminal Case No. 603 of 1994 is set aside with a direction that the trial court shall make a note of the objections raised by the petitioner with regard to

admissibility of documents produced with list Exh. 39 and mark the documents tentatively as exhibits and shall decide such objections at the last stage of the judgment and if the trial Court finds that the objections are not sustainable, shall keep such evidence excluded from consideration. Rule is made absolute.

(Bankim N. Mehta, J.)

/JVSatwara/